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SIXTH REPORT ON STATE RESPONSIBILITY

by

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Revised version of article 12

Revised version of article 12*

1. The injured State shall not resort to countermeasures prior to the conclusion of:

(a) a binding third party settlement procedure to which it is entitled to accede by unilateral initiative under a treaty or other dispute settlement instrument in force;

(b) failing such a title, a binding third party procedure offered to and accepted by the State which committed the internationally wrongful act;

2. The conditions set forth in the preceding paragraph

(a) do not apply to such urgent, temporary measures as are required to protect the rights of the injured State or limit the damage caused by the internationally wrongful act;

(b) cease to apply where the State which committed the internationally wrongful act:

(i) does not accept the offer of the binding third party procedure under paragraph 1 (b) of the present article;

(ii) does not cooperate in good faith in establishing or implementing the binding third party procedure envisaged in paragraph 1 (a) and (b) of the present article;

(iii) fails to honour a request or order emanating from that procedure; or

(iv) does not comply with the decision rendered by that procedure.

3. Except in the case of urgent temporary measures envisaged in paragraph 2 (a) of the present article no countermeasures shall be resorted to by the injured State without appropriate and timely communication of its intention to the State which committed the internationally wrongful act.

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* Submitted by the Special Rapporteur subsequent to the Commission's decision to refer to the Drafting Committee his proposals for articles 11 and 12 as contained in addendum 2 to his sixth report.